

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOYCE M. RANKINE; LAWRENCE
S. STANTON,

v.

Plaintiffs,

ROLLER BEARING COMPANY OF
AMERICA, INC.; DOES 1
THROUGH 10, inclusive

Defendants.

ROLLER BEARING COMPANY OF
AMERICA, INC.,

Counter Claimant,

v.

JOYCE RANKINE; LAWRENCE S.
STANTON,

Counter Defendants.

NO. 12-CV-2065-MMA (BLM)

**ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

[Doc. No. 91]

Presently before the Court is Plaintiffs'/Counter Defendants' Joyce Rankine and Lawrence Stanton's ("Plaintiffs") motion for summary judgment. [Doc. No. 91.] Defendant/Counter Claimant Roller Bearing Company of America ("Defendant" or "RBC") opposed the motion, and Plaintiffs filed a reply. [See Doc. Nos. 97, 102.] For the reasons set forth below, the Court **GRANTS** Plaintiffs' motion for summary judgment.

BACKGROUND¹

This is a breach of contract case arising from a dispute over the payment of two promissory notes executed in connection with the sale of capital stock.

In 2006, Plaintiffs Joyce Rankine and Lawrence Stanton, in addition to Ms. Rankine's late husband, Baxter Rankine, were the three sole shareholders in All Power Manufacturing, Inc. ("All Power"). All Power principally designs and manufactures bushings for the aerospace industry.

On September 11, 2006, Plaintiffs entered into a Stock Purchase Agreement (“Agreement”) with Defendant RBC, a bearings manufacturer, to sell their outstanding shares in All Power for a total price of \$10,321,163. [Defendant’s Statement of Disputed Facts (“DSF”) ¶ 1, Doc. No. 99; Agreement § 2.2.] The parties executed two Non-Negotiable Promissory Notes in connection with the Agreement—one note in favor of Rankine (“Rankine Note”)² and one in favor of Stanton (“Stanton Note”) (together “Notes”). [Plaintiffs’ Statement of Undisputed Facts (“SUF”) ¶ 1, Doc. No. 91-1.] The principal amount of the Rankine Note is \$600,000 with an annual interest rate of 6.5%. [Id.] The principal amount on the Stanton Note is \$150,000 with an annual interest rate of 6.5%. [Id.] Both Notes were originally payable in full on September 12, 2007. [See Non-Negotiable Promissory Notes, Doc. Nos. 91-3, 91-4.]

Section 1.3 of the Notes permits RBC to “set-off” the amount due under the Notes should RBC be entitled to indemnification or payment as set out in the Stock Purchase Agreement. [See *id.* § 1.3.] On September 10, 2007, two days before the Notes became due, RBC exercised its set-off rights, claiming (1) All Power was unable to collect \$12,406 of accounts receivable; (2) \$98,451 of All Power inventory

¹ These facts are not reasonably in dispute unless otherwise noted.

² After the Rankine Note was executed, Plaintiff Rankine's husband, Baxter Rankine, passed away and she became the successor-in-interest to his right to payment under the Rankine Note. [SUF ¶ 2.]

1 was not usable; (3) RBC was required to make an estimated corporate income tax
 2 payment of \$150,000; and (4) RBC was exposed to Mexican income taxes in excess
 3 of \$900,000. [DSF ¶ 93-94.] Of these four claims, the Mexico tax issue was of the
 4 greatest concern for RBC. [*Id.* ¶ 95.] Plaintiffs disputed that any Mexican taxes
 5 were owed. The parties each hired independent Mexican counsel to assess the tax
 6 liability to RBC. After nearly a year and a half of investigation, the parties agreed
 7 that there was a five-year statutory period within which RBC was potentially
 8 exposed to tax liability in Mexico. [*Id.* ¶¶ 95-96.] Accordingly, the parties agreed to
 9 extend the payment date on the Notes past the five-year liability period to June 30,
 10 2012. Additionally, the parties amended the Notes' set-off provision as follows:

11 **Limitation on Right of Set-Off.** Notwithstanding anything to the contrary
 12 set forth in Section 10.7 of the Agreement or Paragraph 1.3 of the Note,
 13 unless on or prior to June 30, 2012, [RBC] receives a communication from
 14 the Mexican taxing authorities alleging a tax due from All Power relating
 15 to the period prior to September 11, 2006 (a "Mexico Tax Claim"), the
 16 principal amount of the Note, and all accrued and unpaid interest thereon,
 shall be paid in full by [RBC] on June 30, 2012, ***without off-set of any kind or nature.*** If a Mexico Tax Claim is received by [RBC] on or prior
 17 to June 30, 2012, then the provisions of the Stock Agreement and the Note
 applicable thereto will apply in full force and effect.
 18

19 [Amendments to Notes, Doc. Nos. 91-3, 91-4 (emphasis added).]

20 RBC did not receive any communications from the Mexican tax authority
 21 prior to June 30, 2012. [SUF ¶ 4.] However, RBC refused to pay the amounts due
 22 under the Notes, claiming that it did not agree to waive RBC's set-off rights. [DSF ¶
 23 99.] Instead, RBC maintained that the Amendments to the Notes were limited to
 24 resolution of the Mexico tax set-off claim, and that the only set-off claims waived
 were the three remaining, known set-off claims (accounts receivable, inventory, and
 U.S. tax issues) listed in the September 2007 letter. [DSF ¶ 100-101.]

25 This action followed. In their state-court complaint, Plaintiffs assert breach of
 26 contract claims relating to RBC's failure to fulfill its obligations under both Notes.
 27 After removing to this Court, RBC simultaneously answered and counterclaimed for,
 28 *inter alia*, breach of contract and fraud. [Doc. Nos. 4-5.] After the Court dismissed

1 RBC's counterclaim for failure to state a claim, RBC filed the operative First
 2 Amended Counterclaim ("FAC"). [Doc. No. 42.] Defendant's FAC revolves
 3 around its allegations that former All Power employees, David Rankine, Jeffrey
 4 Rindskopf, Charles Sharp, David McCulloch, and Mary Alvarado illegally used All
 5 Power's intellectual property to unfairly compete with RBC. [See FAC ¶ 16.] On
 6 February 5, 2013, Plaintiffs moved to dismiss the FAC on grounds that (1) any
 7 alleged misconduct by All Power employees occurred after the sale of All Power to
 8 RBC, and (2) RBC is contractually barred from making claims of set-off. [See Doc.
 9 No. 43-1.] The Court denied Plaintiffs' motion, accepting as true Defendant's
 10 allegations that the alleged misconduct occurred before the sale and that the
 11 amendment to the Notes only limited the Mexico tax set-off. [Doc. No. 70.]

12 Plaintiffs move for summary judgment as to both their claims and Defendant's
 13 FAC. Plaintiffs argue that no genuine issues of material fact remain as to
 14 Defendant's obligation to perform under the Notes.

15 **LEGAL STANDARD**

16 A motion for summary judgment should be granted if there is no genuine
 17 issue of material fact and the moving party is entitled to judgment as a matter of law.
 18 Fed. R. Civ. P. 56(a). The purpose of summary judgment "is to isolate and dispose
 19 of factually unsupported claims or defenses." *Celotex v. Catrett*, 477 U.S. 317, 323-
 20 24 (1986). The moving party bears the initial burden of informing the Court of the
 21 basis for the motion, and identifying portions of the pleadings, depositions, answers
 22 to interrogatories, admissions, or affidavits which demonstrate the absence of a
 23 triable issue of material fact. *Id.* at 323. The evidence and all reasonable inferences
 24 therefrom must be viewed in the light most favorable to the non-moving party. *T.W.*
 25 *Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630-31 (9th Cir.
 26 1987).

27 If the moving party meets its initial burden, the burden then shifts to the
 28 non-moving party to present specific facts showing that there is a genuine issue of

1 material fact for trial. *Celotex*, 477 U.S. at 324. The opposing party “must do more
 2 than simply show that there is some metaphysical doubt as to the material facts.”
 3 *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 588 (1986). When a
 4 party fails to properly address another party’s assertions of fact, a court may
 5 consider these facts as undisputed. Fed. R. Civ. P. 56(e)(2). If the motion and
 6 supporting materials, including facts considered undisputed, show the movant is
 7 entitled to summary judgment, the Court may grant the motion. Fed. R. Civ. P.
 8 56(e)(3). Summary judgment is not appropriate if the non-moving party presents
 9 evidence from which a reasonable jury could resolve the disputed issue of material
 10 fact in his or her favor. *Anderson*, 477 U.S. at 248; *Barlow v. Ground*, 943 F.2d
 11 1132, 1136 (9th Cir.1991). However, “[w]here the record taken as a whole could
 12 not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine
 13 issue for trial.’” *Matsushita Elec. Indus. Co.*, 475 U.S. at 587.

14 DISCUSSION

15 I. Plaintiffs’ Breach of Contract Claims

16 Plaintiffs seek summary judgment on their breach of contract claims. In
 17 California, “[a] cause of action for breach of contract requires proof of the following
 18 elements: (1) existence of the contract; (2) plaintiff’s performance or excuse for
 19 nonperformance; (3) defendant’s breach; and (4) damages to plaintiff as a result of
 20 the breach.” *CDF Firefighters v. Maldonado*, 158 Cal. App. 4th 1226, 1239 (2008).

21 The existence of a contract is undisputed.³ The point of contention is whether
 22 RBC breached the contract by failing to pay the amount due under the Notes on June
 23 30, 2012. RBC contends that it had a contractual right to withhold payment because
 24 the contract allowed it to “set-off” the amount due. RBC further argues that its
 25 obligation to pay under the Notes was excused by Plaintiffs’ prior breach of the
 26 Agreement. RBC’s theory of breach has shifted dramatically throughout the

27
 28 ³ Consisting of the Agreement, concomitant Notes, and subsequent amendments to the
 Notes.

duration of this case. In the beginning, RBC claimed that “Key Employees” for All Power fraudulently misappropriated the company’s trade secret information and used the information to start a competing business. This theory has been nearly abandoned. RBC’s most recent defense is that Plaintiffs breached the Agreement by failing to transfer all of the intellectual property necessary to conduct the business of All Power. [See Opp. at 18.] The Court will consider the arguments regarding set-off rights and excuse for nonperformance in turn.

A. Set-Off Rights

As a defense to breach, RBC asserts it has a contractual right to set-off the amount due under the Notes. Preliminarily, RBC presents no evidence demonstrating the monetary value of its set-off claims. However, as RBC withheld the entire sum due under the Notes, it appears RBC believes it is entitled to set-off \$750,000. In any event, this defense is unavailing because RBC unambiguously waived its set-off rights. The Amendments to the Notes clearly provide that “[U]nless on or prior to June 30, 2012 [RBC] receives a communication from the taxing authorities alleging a tax due from All Power . . . , the principal amount of the Note, and all accrued and unpaid interest thereon, shall be paid in full by [RBC] on June 30, 2012, ***without off-set of any kind or nature.***” [Amendments to Notes, Doc. Nos. 91-3, 91-4.] RBC asserts that it only waived its right to claim then existing set-offs, not to unforeseen and unknown set-offs. [Opp. at 22.] RBC argues that even if a written agreement is clear and unambiguous on its face, a trial court must receive relevant extrinsic evidence that could prove a meaning to which the language of the contract is “reasonably susceptible.” [Opp. at 20 (citing *Pacific Gas and Electric Co. v. G. W. Thomas Drayage Co.*, 69 Cal.2d 33, 37 (1968).] RBC contends that the language of the amendments could reasonably be interpreted as being limited to the set-offs raised at the time the Mexican tax issue arose.

Defendant errs not in its interpretation of the admissibility of extrinsic evidence, but in its failure to *offer any*. Indeed, Defendant fails to provide any

1 extrinsic evidence to clarify the parties' intended meaning of the language in the
 2 amendments. Instead, Defendant relies on the very language of the amendments:
 3 "The *language of the Amendments* demonstrates that they could reasonably be
 4 interpreted as being limited to the set-offs raised at the time the Mexican tax issue
 5 arose." [Opp. at 21 (emphasis added).] The Court disagrees. The language of the
 6 amendments, without any extrinsic evidence demonstrating otherwise, is reasonably
 7 susceptible to only one meaning—that RBC's right to set-off was extinguished
 8 entirely when it did not receive a Mexico tax claim by June 30, 2012.

9 B. Excuse for Nonperformance

10 Next, RBC contends that its obligation to pay under the Notes was excused by
 11 Plaintiffs' prior breach of the Agreement. RBC argues that its performance under
 12 the Notes was "*conditioned upon* RBC's indemnification and set-off rights," [Opp.
 13 at 23 (emphasis added)] so that "Plaintiffs' failure to convey to RBC the intellectual
 14 property assets it represented belonged to them⁴ thereby excused any
 15 counter-performance by RBC under the Notes." [Opp. at 18.] RBC states that its
 16 duty to perform under the notes "hinges on a factual determination of whether
 17
 18

19 ⁴ RBC claims that Plaintiffs failed to disclose that certain "Parts Manufacture Approvals"
 20 ("PMA") obtained from the Federal Aviation Administration ("FAA") were based on the Boeing
 21 Company's proprietary information. A PMA is a combined design and production approval for
 22 modification and replacement articles issued by the FAA. Receipt of a PMA allows a
 23 manufacturer to produce and sell these articles for installation on type certified products. *See*
 24 FAA, *Parts Manufacturer Approval*, http://www.faa.gov/aircraft/air_cert/design_approvals/pma/
 25 (last visited Oct. 31, 2013). One way to receive a PMA is to show that the replacement part is
 26 identical to the original part. To demonstrate identicity, applicants seek "assist letters" from the
 27 approved part's owner.

28 In 2000 and 2001, the FAA issued All Power approximately 17 PMAs for the
 manufacturing of Boeing Commercial Airplane Group parts. The PMAs were based on assist
 letters Boeing supplied All Power. Currently, Boeing is seeking a licensing agreement from RBC
 based on All Power's manufacturing of Boeing replacement parts. [DSF ¶ 72.] RBC fears that if
 it does not enter Boeing's licensing agreement, Boeing may notify the FAA that its "assist letters"
 to All Power are no longer applicable.

29 RBC contends that Plaintiffs' failure to disclose the fact that the PMAs were premised on
 30 Boeing's assist letters constitutes a breach of the Agreement wherein Plaintiffs represented it was
 31 transferring all of the intellectual property assets necessary to conduct All Power's business.

1 Plaintiffs first breached the written agreements.”⁵ [Id.]

2 RBC improperly characterizes its duty to perform under the Notes as
 3 “conditional.” “A condition is a fact, the happening or nonhappening of which
 4 creates (condition precedent) or extinguishes (condition subsequent) a duty on the
 5 part of the promisor. If the promisor makes an absolute or unconditional promise, he
 6 or she is bound to perform when the time arrives.” Witkin, *Summary of Cal. Law*
 7 (10th ed. 2005) Contracts § 776. Here, RBC’s duty to pay under the Notes was
 8 unconditional. Nothing in the Agreement indicates that payment could be excused
 9 by the happening or nonhappening of any fact. Rather, the Agreement and Notes are
 10 clear that on September 12, 2006, RBC purchased All Power from Plaintiffs for a
 11 total of \$10,321,163, \$750,000 of which was due at a later date. RBC errs in
 12 considering the set-off provision in the Agreement as a contractual condition. The
 13 set-off provision—subsequently waived—permitted RBC to adjust the amount due
 14 under the Notes should RBC be entitled to indemnification or payment as set out in
 15 the Agreement. Yet while the set-off provision potentially decreased the amount
 16 owed, it did not render RBC’s performance conditional.

17 Furthermore, the case timeline demonstrates that RBC did not have a viable
 18 excuse for nonperformance on June 30, 2012. In RBC’s counterclaim and first
 19 amended counterclaim, filed September 4, 2012 and January 23, 2013, RBC claimed
 20 that Plaintiffs previously breached the Agreement on a theory of “Key Employee”
 21 misconduct. As set forth below, this theory is meritless. RBC’s revised theory of
 22 breach, namely that Plaintiffs misrepresented the nature of All Power’s PMAs, did
 23 not arise until shortly before the close of discovery in June 2013. [See DSF ¶¶ 71-
 24 72.] Clearly, RBC did not have a valid excuse for nonperformance on June 30,

25 ⁵ RBC cites *Stewart v. Life Ins. Co. of N.A.*, 388 F. Supp. 2d 1138 (E.D. Cal. 2005) for the
 26 proposition that “Plaintiffs’ breach of the Stock Purchase Agreement—by misrepresenting All
 27 Power’s ownership of the intellectual property and failing to convey those assets—excuses RBC’s
 28 payment under the Notes. [Opp. at 17.] *Stewart* is distinguishable on many grounds, not the least
 of which being that the case involved the periodic payment of insurance premiums. *Stewart* has no
 applicability here where, *inter alia*, All Power was purchased in one single transaction.

1 2012, and thus was obligated to pay the amount due. Contract law does not permit
 2 RBC to simply withhold payment until a viable defense presents itself.⁶ Nor is the
 3 Court empowered to retroactively excuse nonperformance. The undisputed material
 4 facts demonstrate that RBC was obligated to pay the full amount of money due
 5 under the Notes on June 30, 2012.

6 In sum, the Court cannot conceive of any way in which to read RBC's
 7 obligation to pay the amounts due under the Notes as conditional. On June 30, 2012,
 8 RBC was contractually bound to pay the principal amounts due under the Notes. It
 9 failed to do so and thereby breached the Agreement and Notes.

10 C. Conclusion as to Plaintiffs' Breach of Contract Claim

11 In conclusion, the Court **GRANTS** Plaintiffs' request for summary judgment
 12 as to their breach of contract claims. There remain no genuine issues of material fact
 13 regarding RBC's obligation to pay the amount due under the Notes.

14 II. RBC's Counterclaims

15 Plaintiffs also move for summary judgment on RBC's nine counterclaims. All
 16 of the counterclaims are based on theory of "Key Employee" misconduct. As set
 17 forth in RBC's FAC:

18 RBC is informed and believes and thereon alleges that before Closing and
 19 the Rankine and Stanton Notes became due, 'Key Employees' David
 20 McCulloch, David Rankine, Jeffrey Rindskopf, and Charles Sharp, as well
 21 as Mary Alvarado engaged in fraudulent, unlawful, and wrongful conduct
 22 by misappropriating, using disclosing, and obtaining by improper means,
 23 the company's trade secret information, including but not limited to its
 24 Intellectual Property Assets . . . which information was necessary for the
 25 operation of the company's business.

26 [FAC ¶ 38.] RBC asserts that this alleged "Key Employee" misconduct is imputed
 27 to Plaintiffs Rankine and Stanton by virtue of § 1(c) of the Agreement which
 28 provides that, "[t]he Sellers will be deemed to have "Knowledge" of a particular fact

26 ⁶ This is not to say that RBC is left without legal recourse. On the contrary, they are
 27 entitled to affirmatively seek breach of contract damages should they discover that Plaintiffs
 28 breached the contract. This case cannot provide that forum, as RBC has not stated a viable
 counterclaim for breach of contract against Plaintiffs.

1 or other matter if either Seller has Knowledge of such fact or if any Key Employee
 2 has Knowledge of such fact or other matter.” [Id. ¶ 35 (citing Agreement at § 1).]
 3 The Agreement defines “Key Employees” to include Baxter Rankine, Charles Sharp,
 4 Tom Blanch, David McCulloch, David Rankine, and Jeffrey Rindskopf.
 5 [Agreement at § 1.] In 2011, Rindskopf, McCulloch, and Rankine formed a
 6 competing company, Caliber Aero, LLC. [See Rankine Decl. ¶ 5, Doc. No. 91-8.]
 7 RBC asserts—with no supporting evidence⁷—that “[i]t would have been impossible for
 8 the Key Employees’ further company, Caliber Aero, LLC, to have started, operated,
 9 obtained sales, and produced the same products manufactured by All Power,
 10 without” “utilizing the information that was derived from [All Power’s] intellectual
 11 property assets.” [Opp. at 12 & fn. 1.]

12 There is no evidence to support RBC’s claim of Key Employee misconduct.
 13 It is pure conjecture that the Key Employees utilized All Power’s intellectual
 14 property assets when forming Caliber Aero, LLC. Moreover, Plaintiffs cannot be
 15 held liable for the Key Employees’ conduct, even if nefarious. As argued by
 16 Plaintiffs, to allow for the “knowledge” of Key Employees to be imputed to
 17 Plaintiffs, the alleged misappropriation of All Power’s assets must have arisen prior to
 18 September 12, 2006—i.e., before the Stock Purchase Agreement was executed.
 19 However, all of the subject employees continued to work for All Power for over a
 20 year after September 12, 2006. Rankine and Rindskopf resigned approximately one
 21 year after the sale [Rankine Decl. ¶ 3; Rindskopf Decl. ¶ 3]; McCulloch resigned in
 22 June 2009 [McCulloch ¶ 3]; Alvarado resigned in March 2012. [Alvarado Decl. ¶
 23 3.] Furthermore, each of the subject employees affirm via declaration that they did
 24 not take any All Power or RBC confidential or proprietary information when they
 25 resigned from All Power, and that they have never used or disclosed any such

27 ⁷ The Court sustains Plaintiffs’ objection to the deposition testimony of Michael S.
 28 Gostomski that “Key Employees” must have wrongfully taken All Power’s intellectual property in
 order for Caliber Aero to operate. This statement lacks foundation and is purely speculative.

1 information in connection with a competing business. [Rindskopf Decl. ¶ 4;
2 McCulloch Decl. ¶ 4; Rankine Decl. ¶ 4; Alvarado Decl. ¶ 4.]

3 Other than RBC’s intuition that it “would have been impossible” for Caliber
4 Aero to have started without misconduct, RBC offers no evidence to support this
5 claim. Indeed, apart from the “impossibility” argument, RBC otherwise abandons
6 this theory of breach in its opposition to Plaintiffs’ summary judgment motion.
7 Rather than stay true to its original theory of liability, RBC recasts its counterclaims
8 as being related to Plaintiffs’ failure to disclose that they used Boeing assist letters in
9 order to obtain PMAs from the FAA. [See Opp. at 24-25.] Yet, this is an entirely
10 new theory of liability, and one that was not pleaded in RBC’s counterclaim.
11 Indeed, RBC’s counterclaims do not once mention Boeing or PMAs. On this basis
12 alone, the Court could award summary judgment in Plaintiffs’ favor. *See Coleman*
13 *v. Quaker Oats Co.*, 232 F.3d 1271, 1292-93 (9th Cir. 2000) (permitting an
14 unpleaded new theory of liability at the summary judgment stage would prejudice
15 the party against whom the new theory is being brought: the new claim should have
16 been brought by means of a motion to amend at an earlier stage of the litigation).

17 Summary judgment is entered in Plaintiffs’ favor on Defendant’s
18 counterclaims.

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CONCLUSION

For the reasons set forth above, the Court **GRANTS** Plaintiffs' motion for summary judgment in its entirety. Accordingly, judgment shall be entered,

1. in favor of Plaintiff Rankine against Defendant RBC in the amount of six hundred thousand dollars (\$600,000) plus 6.5% annual interest; and
 2. in favor of Plaintiff Stanton against Defendant RBC in the amount of one hundred and fifty thousand dollars (\$150,000) plus 6.5% annual interest.

The Clerk of Court is instructed to enter judgment accordingly.

IT IS SO ORDERED.

DATED: November 5, 2013

Michael M. Arello

Hon. Michael M. Anello
United States District Judge